

1 E-filed on 11-17-06

2

3

4

5

6

7

8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

9

10

11

12 IN RE CYGNUS TELECOMMUNICATIONS
TECHNOLOGY, LLC, PATENT
LITIGATION

No. MDL-1423
This Order Applies to All Actions

13

14

THIS ORDER RELATES TO:

All Actions

C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03378 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-04003 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW
C-06-06479 RMW

15

16

17

18

19

20

21

22

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS FOR LACK OF
SUBJECT-MATTER JURISDICTION

23

24

Defendants assert that Cygnus does not own the patents-in-suit and move to dismiss these consolidated actions for lack of subject-matter jurisdiction. Although troubled by the inconsistencies in the evidence pertaining to the assignment of the patents to Cygnus, the court is satisfied that Cygnus has shown by a preponderance of the evidence that the assignment set forth in the September 1997 operating agreement is genuine. Cygnus's explanation that the representations

1 in Paragon's May 1998 petition to the Federal Circuit regarding the '984 application (case no. 98-
2 547) and Wyatt's April 1998 declaration filed with the PTO in connection with the '115 application
3 regarding Paragon's ownership of the applications occurred through inadvertence seems logical in
4 light of the facts that Cygnus paid the issuance fees for the patents and represented to the PTO that
5 an assignment had taken place, has acted as the owner of the patents since their issuance, and the
6 September 1997 assignment was between entities both controlled by Wyatt. However, since
7 Cygnus's counsel admittedly failed to record the assignment, failed to produce evidence of an
8 assignment until October 2006, and filed two documents stating that Paragon was the owner of the
9 patents after the date of the assignment, the court would consider a motion for reasonable fees and
10 expenses incurred by defendants in pursuit of this motion. The motion to dismiss is denied.

11

12

13 DATED: 11/17/06
RONALD M. WHYTE
United States District Judge

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **A copy of this order was mailed on _____ to:**

2 **Counsel for Plaintiff:**

3 John P. Sutton
2421 Pierce Street
4 San Francisco, CA 94115-1131

5 **Counsel for Defendants:**

6 Alan M. Weisberg, Steven M. Greenberg
Christopher & Weisberg, P.A.
7 200 E. Las Olas Avenue
Suite 2040
8 Fort Lauderdale, FL 33301

9 John C. Carey
Rodriguez Greenberg & Paul
10 1395 Brickell Ave, Suite 700
Miami, FL 33131

11 Felice B. Galant, Gregory B. Wood
Fulbright & Jaworski L.L.P.
12 865 South Figueroa Street
Twenty-Ninth Floor
13 Los Angeles, CA 90017

14 Joseph P. Zammit
Fulbright & Jaworski
15 666 Fifth Avenue
New York, NY 10103

17 John F. Mardula, Jon L. Roberts
Roberts Mardula & Wertheim, LLC
18 11800 Sunrise Valley Drive
Suite 1000
19 Reston, VA 20191-5302

20 Richard B. Sheldon
Mitchell Silberberg & Knupp LLP
21 11377 West Olympic Boulevard
Los Angeles, CA 90064-1683

23 Jeffrey L. Silvestrini, Brian F. Roberts
Cohne Rappaport & Segal
P.O. Box 11008
24 Salt Lake City, UT 84147-0008

25 Raymond J. Etcheverry
Parsons, Behle & Latimer
26 One Utah Center
201 South Main Street,
27 Suite 1800, Post Office Box 45898
Salt Lake City, UT 84145

Kieran Patrick Fallon
436 SW 8th Street
Miami, FL 33130-2814

Matthew Francis McGahren
Baum & McGahren
6171 Crooked Creek Road
Norcross, GA 30092

Lori D. Greendorfer, Maxim H. Waldbaum
Schiff Hardin LLP
623 Fifth Avenue
28th Floor
New York, NY 10022

Thomas T. Tamlyn
Yeskoo Hogan & Tamlyn, LLP
535 Fifth Avenue
New York, NY 10017

Peter S. Canelias
Law Offices of Peter S. Canelias
420 Lexington Avenue
Suite 2148
New York, NY 10170

Elizabeth E. Green, R. Scott Shuker
Gronek & Latham, LLP
390 N. Orange Avenue
Suite 600
Orlando, FL 32801

Gregory J. Nelson
Nelson & Roediger
3333 E Camelback Road, Suite 212
Phoenix, AZ 85018

Peter Neil Greenfeld
Greenfeld Law Group
3333 E Camelback Road, Suite 212
Phoenix, AZ 85018-2324

Matthew McGahren
Baum, McGahren & Chiu, LLC
6171 Crooked Creek Road
Norcross, GA 30092

1 **Courtesy Copy:**

2 Clerk of the Panel
3 Judicial Panel on Multidistrict Litigation
3 Thurgood Marshall Federal Judiciary Building
4 One Columbus Circle, N.E.
4 Room G-255, North Lobby
5 Washington, DC 20002-8004

6 Counsel is responsible for distributing copies of this order to co-counsel, as necessary.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28